Filed 6/29/09 Marriage of Schenk and Calder CA3

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

In re the Marriage of SUZANNE SCHENK and BRIAN CALDER.	
SUZANNE SCHENK, Respondent, v. BRIAN CALDER, Appellant.	C057283 (Super. Ct. No. FL338947)

Father, Brian Calder, appeals from a trial court order awarding mother, Suzanne Schenk, sole legal and physical custody of the parties' minor child and ordering father to pay to mother $2,550 per month for child support. Finding none of father's claims to have merit, we shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Father and mother married in July 2004, and separated six months later. Mother filed for dissolution of marriage on January 18, 2005, and a bifurcated judgment granting dissolution

was entered on November 1, 2005. Together, the parties had one minor child, born in July 2004.

On July 6, 2007, mother, along with counsel for both parties, appeared before the trial court. Father remained in England; however, his attorney was present. With numerous motions pending before the court, counsel said they were present to conduct a trial on mother's motion to modify child support. The court nevertheless raised the issue of custody.

Counsel for mother said that the issue of custody was set for trial on July 16, 2007, but informed the court that in a supplemental report, Dr. Roeder recommended that father should not have any contact with the minor "unless he's back in the country for a period of at least three months." The court confirmed that counsel had had an opportunity to review the supplemental report. Then, in an effort to finally resolve the issue, and recognizing that in July, father still would be in England, the court adopted Dr. Roeder's recommendations.

The court went on to hear additional evidence on the issue of child support, ultimately ordering father to pay $2,550 per month to mother for child support. Father appeals.

DISCUSSION

Father first contends the trial court in effect denied him the right to visit his child, and erred in doing so without making a finding that visitation would be detrimental to the child. The trial court ruled that any visitation between father and the three-year-old child during "the foreseeable few years" following the court's order must occur in the United States and

only if father is present in the United States for a minimum of three months to allow sufficient time for a clinical assessment of whether visitation would be in the child's best interest. Asserting that he can never return to the United States because he has been deported to England, father claims the visitation order constitutes a "*de facto* termination of [his] parental rights" unsupported by a finding of detriment to the child. The contention fails for two reasons.

First, in making the visitation order, the trial court adopted the recommendation of Dr. Roeder, who was appointed by the court pursuant to Evidence Code section 730 to provide a psychological evaluation regarding custody and visitation. Father has failed to include in the record a copy of Dr. Roeder's report. Thus, we must presume the report contains evidence that supports the court's implicit finding that, until the minor is older, it would be detrimental to him to require visitation with father in England. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.)

Second, by its terms, the visitation order was addressed only to the near future during which it would not be in the young child's best interest to have him travel to England for visitation. Nothing in the order precludes father from seeking visitation in England in the future when the child is older. Therefore, the order does not constitute a termination of his parental rights.

Next, father contends the trial court erred in "deciding child support without [father] having a meaningful opportunity

to be heard." In his view, the court should have allowed father to communicate with the court "by telephone, or through supplying declarations." He notes that near the beginning of the hearing, his attorney stated: "This trial is -- [father] can't testify, he's not here, I mean, if I could put him on the phone or if you want him to file a supplemental declaration." His attorney, however, did not explain why father's existing evidence was insufficient, and never made an offer of proof as to what additional evidence father could have provided if allowed to appear by telephone or to submit a supplemental declaration. Because father fails to show how he was prejudiced by his absence from the proceeding, he is not entitled to reversal of the judgment. (*San Diego Housing Com. v. Industrial Indemnity Co.* (1998) 68 Cal.App.4th 526, 544-545 [appellant bears the burden of showing both error and the resulting prejudice].)

Contrary to father's third assertion, which is unsupported by any meaningful analysis or citation to legal authority pertinent to this case, the issues he raises are not "questions of law raised on undisputed facts and [that] raise important issues of public policy." He is wrong in baldly asserting that de novo review applies because the issues he raises "deal with the statutory interpretation and application of legal principle questions [sic]." Issues of child support and custody involve questions of fact.

Father's last contention is that the trial court's orders "exceeded the bounds of reason considering all the

circumstances" and "resulted in a miscarriage of justice." This assertion fails because it is presented without any meaningful analysis or citation to pertinent authority (*In re Marriage of Nichols* (1994) 27 Cal.App.4th 661, 672-673, fn. 3), father has not provided an adequate record to review his claims of error, (*Denham v. Superior Court*, *supra*, 2 Cal.3d at p. 564), and he has failed to affirmatively demonstrate prejudice (*San Diego Housing Com. v. Industrial Indemnity Co.*, *supra*, 68 Cal.App.4th at pp. 544-545).

DISPOSITION

The order is affirmed. Mother's request for an award of attorney fees as sanctions for filing a frivolous appeal is denied. Although father's contentions fail, mother has not demonstrated that every contention is completely without merit or brought with an improper motive. (*In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 651-654.) Father shall reimburse mother for her costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1).)

ROBIE, J.

We concur:

SCOTLAND, P. J.

HULL, J.